

Apr 25 2016

Transborder Abduction of Hong Kong Booksellers: Implications under International Law

Leila Nasr

By Sean Yau Shun Ming*

In late 2015, five co-owners of a Hong Kong bookstore – specialising in selling Chinese political books mostly banned in China – all [disappeared](#). Among them, the international community has paid considerable attention to Gui Minhai, a Swedish national who went missing in Pattaya, Thailand last October, and Lee Bo, a British national who disappeared from Hong Kong last December. Later on, Gui ‘confessed’ on state-run [CCTV](#) that he had fled because he had been involved in a fatal drunk-driving car accident more than a decade ago and that he was returning to China voluntarily. Rumour has it that the detention of the five booksellers is to prevent the publication of a particularly provocative book, [Xi Jinping and His Lovers](#), together with other politically-sensitive books criticising the senior Chinese leadership.



The five missing booksellers are being detained in mainland China. Photograph: Ringo Chiu/ZUMA Press/Corbis

To get the obvious issue out of the way: the suspected abduction of Gui and Lee by Chinese authorities would seemingly constitute enforced disappearance. The media and human rights groups dealt very carefully with these two cases due to the lack of evidence. However, the fact that four Chinese men reportedly [entered](#) Gui’s flat in Thailand and that Lee disappeared from the bookstore’s warehouse and miraculously entered China with his travel document still at home, should logically point to a clear case of abduction.

Against this background, this incident – while unprecedented in Hong Kong – simply falls in line with the Chinese practice of suppressing freedom of expression. In 2014, the US State Department [documented](#) the Chinese censorship of books containing politically-sensitive content, as well as the use of televised confessions by public security authorities in order to establish guilt before trial proceedings. A telling example is the case of Gao Yu, a veteran Chinese journalist, who was forced to confess on state television in May 2014 in order to avoid her son being targeted and punished.

In the present case, the booksellers were abducted following a 2013 Chinese government [directive](#), “Sweeping the Source”, which explicitly targets the Hong Kong publishing industry to stop “counter-revolutionary” publishing activities. The aftermath of televised confession of Gui seemingly made under duress, as well as the unconvincing hand letters by Lee, demonstrated the decentralisation and thoughtlessness of Chinese law enforcement. Meanwhile, the incident entails significant ramifications under international law as well as in Hong Kong.

First, the fact that Gui was forcibly removed – by whatever means – from Thai to Chinese jurisdiction deserves examination under the international law of enforced disappearance, which is defined in [Article 2](#) of International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED) as:

... arrest, *detention*, *abduction* or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, *followed by a refusal to acknowledge the*

deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

If the Thai Government had given consent, Gui's case might have been one of extraordinary [rendition](#) for its lack of judicial permission. This is not without precedent: Jiang Yefei and Dong Guangping, Chinese dissidents and recognised refugees by UNHCR, were [deported](#) from Thailand to China in November 2015. Previously, the Thai authorities had also forcibly [returned](#) some 100 ethnic Uighurs of Chinese citizenship to China where they were at risk of torture.

Likewise, Gui's case might point to Thailand's violation of the non-refoulement [principle](#), which prohibits transferring people to jurisdictions where they would be at real risk of human rights violations or abuses. The adoption of a rights-based perspective also reveals a substantial breach of the booksellers' human rights, particularly the deprivation of their right to individual security and liberty. As further codified in [Article 9](#) of ICCPR, anyone deprived of his or her liberty by arrest or detention shall be entitled to proceedings before a court which, without delay, will determine the lawfulness of detention.

Moreover, the incident represents a serious attack on China's commitment to Hong Kong's autonomy under the "[one country, two systems](#)" configuration. Under such framework, Hong Kong citizens are supposedly to be protected by the Basic Law under which Chinese law enforcement officials have no capacity to exercise any legal authority, let alone the transfer of individuals back to the mainland.

More specifically, the inherent autonomy enjoyed by the Hong Kong Special Administrative Region (HKSAR) enables itself to proactively investigate. Evidence to the contrary, however, suggests the potential participation or acquiescence of the HKSAR, especially when Lee crossed the border without his travel documents. Despite speculations over the possible assistance by the HKSAR, the present circumstance showcases the passive and intimidated attitude of the HKSAR under the current political landscape. Ostensibly, its recent pro-Beijing moves have sparked concern over whether the Hong Kong government is still capable of safeguarding the effective implementation of the 'One Country, Two Systems principle of governance.

To date, some of the most pressing questions, such as where they are detained or on what charges they are being investigated, remain [unanswered](#). To secure procedural justice and due process to all five booksellers, they need to be afforded the right to legal representation and access to court. The violation of these rights by China is equivalent to arbitrary detention.

Moving forward, if Chinese law enforcement officials could make cross-border arrests, China would be stepping outside the bounds of the rule of law. More precisely, the case of Lee Bo as a precedent for the Central Authorities to carry out law enforcement in Hong Kong is particularly worrisome: it not only signified increased scrutiny on the political freedom of the autonomous region, but also potentially damage its constitutional principle of 'One Country, Two Systems'. Consequently, as former Chief Secretary Anson Chan [suggested](#), "a high degree of autonomy" as promised to Hong Kong since 1997 is at risk.

** Sean Yau Shun Ming is a LLB candidate at University of Hong Kong. He is also the Program Director of Justice Labs and a research intern at Amnesty International Hong Kong. He can be reached at seanyau@connect.hku.hk.*

This entry was posted in [Activism](#), [Democracy](#), [Discrimination](#), [Law](#), [Politics](#), [Uncategorized](#). Bookmark the [permalink](#).